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November 4, 2009

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 6214

Dear Mr. Jordan:

We are writing this letter on behalf of Obama for America (the "Committee") and Martin Nesbitt, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by James R. Wilkins (the "Complainant"). For the reasons set forth below, the Complaint is without merit and should be dismissed.

The Complaint alleges that Respondents have violated the Federal Election Campaign Act (the "Act") by knowingly accepting prohibited contributions from foreign nationals and fraudulent or excessive contributions from individuals. They have not. Respondents have acted in full compliance with the Commission's requirements at all times.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). Here, the Complaint presents no evidence to suggest that Respondents have ever knowingly solicited, accepted, or received prohibited contributions. Rather, the Complaint purports to have reviewed the universe of contributions the Committee accepted during the 2008 election cycle, and has divined from those contributions certain contribution "patterns" that the Complainant suspects, based on "common logic," are evidence of illegality. The Complainant, however, presents no specific facts that would constitute a violation of law. Nor does he actually allege any violation of law; in fact, he concedes plainly that "[i]n this case, no law has been broken." See Complaint at 12.

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In the absence of allegations of illegality, this Complaint collapses to nothing but conjecture. The Commission therefore may not find "reason to believe," and must dismiss the Complaint immediately.

## INTRODUCTION

Obama for America was the principal campaign committee for President Barack Obama's campaign for President. The volume of contributions the Committee raised, both online and through more traditional means, is unprecedented for a political campaign. To process them all, the Committee developed -- in the extraordinarily short amount of time afforded it at the beginning of a two-year election-cycle -- a remarkably complex and nimble vetting and compliance system. This system met and surpassed the procedural requirements the Act and Commission regulations impose on the collection and processing of contributions. Most importantly, it ensured that the Committee did not knowingly accept contributions in excessive amounts or from prohibited sources.

As we describe in detail below, the Committee did everything it reasonably could to prevent the acceptance of unlawful contributions. It added safeguards on its webpage to prevent online donors from entering false or fraudulent data. It required donors living abroad to enter U.S. passport numbers when giving online, and to present their passport numbers when giving in person. Moreover, it went to extraordinary lengths to confirm the legitimacy of each contribution once the donor relinquished control of it, utilizing comprehensive vetting and compliance procedures and promptly refunding any contributions found to be excessive, or from a foreign national or other impermissible source.

The Complaint presents no evidence to suggest that the Committee did not act in full compliance with the Commission's requirements; as noted above, it goes further, and concedes that the Committee complied with all relevant laws. Because the Complaint alleges no actual conduct by Respondents that violates a statute or regulation over which the Commission has jurisdiction, the Complaints are without legal merit and should be dismissed.

## FACTUAL AND LEGAL ANALYSIS

### A. Comprehensive Vetting and Compliance Procedures

Before the Committee launched its fundraising program, the Committee carefully developed and implemented comprehensive vetting and compliance procedures to ensure that it did not knowingly solicit, accept, or receive prohibited contributions. Pursuant to this system, and consistent with the Commission's regulations, campaign staff and outside vendors were tasked with examining all contributions to the Committee once they were received -- whether online, through direct mail, in person, or otherwise -- for "evidence of illegality and for ascertaining

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whether contributions received, when aggregated with other contributions from the same contributor, exceed[ed]" federal contribution limits. 11 C.F.R. § 103.3(b). Any contributions made to the Committee that were found to be excessive or fraudulent were promptly refunded in accordance with the Commission's regulations.

The Committee's compliance and vetting procedures included an extensive back-end process to ensure it caught and refunded any excessive or otherwise unlawful contributions. As the volume of contributions to the Committee increased during the course of the campaign, the Committee continuously adjusted its vetting and compliance procedures to adapt to the increased volume. At regular intervals, the Committee conducted automated searches of its donor database – including all contributions, whether raised online or not – to identify any excessive or fraudulent donations. Contributions from repeat donors were examined to ensure that the total amount received from a single donor did not exceed the contribution limits. Contributions were further examined to ensure that the donors were not foreign nationals. *See id.* § 110.20. Any contributions made to the Committee that were found to be excessive, fraudulent, from a foreign national, or otherwise unlawful were promptly refunded in accordance with the Commission's regulations.

The Complaint presents no evidence to suggest that the Committee did not comply at all times with the Commission's regulations, or that it ever knowingly solicited, accepted, or received prohibited contributions.

## **B. Resolution of Allegations Cited in Complaint**

### **1. Fraudulent Contributions**

The Complaint alleges that the Committee accepted and retained contributions from individuals that it had reason to suspect used fictional names or other fraudulent data. It did not. During the course of the 2008 election cycle, whenever the Committee identified contributions that were made using obviously fictional names or fraudulent data, the Committee refunded the contributions or charged the amount of the contribution(s) back to the credit card used to make the initial contribution(s). *See, e.g., Respondents' Response to MUR 6078, 6000, and 6168* (Dec. 1, 2008).

The Complaint cites to examples of fraudulent contributions made using the name of Mary Biskup, and using the credit card issued to Steve and Rachel Larman. Consistent with the Commission's regulations and the Committee's compliance and vetting procedures described above, the Committee identified any fraudulent contributions and made the necessary refunds in a timely manner. As noted in the Complaint, the fraudulent contributions attributed to Mary Biskup were made during the last week of September 2008, and were refunded less than three

weeks later. See Complaint at 3. Included among the refunded contributions were those made through the fraudulent use of the credit card issued to Steve and Rachel Lerman.

The Complaint also cites to a number of contributions made by contributors who listed invalid street addresses in Capitol Heights, MD. Here, as well, the Committee identified the fraudulent data. These contributions have either been credited back to the cards that were used or disgorged to the United States Treasury.

Furthermore, the Complaint presents no evidence that the Committee ever knowingly solicited, accepted, or received contributions from these – or any other – individuals using fictional names or fraudulent data.

## 2. Irregular Contribution Patterns

The Complainant identifies several contribution patterns that he finds “unusual” or illogical (for example, contributions were made in “non-traditional” or “non-dollar” amounts). In some cases, multiple contributions in the same “non-traditional” or “non-dollar” amounts were made on the same day. Significantly, the Complainant alleges no specific violation of federal law in connection with these patterns – just the appearance of some irregularity.

Even on the most expedited of reviews, the Complainant’s methodology in cobbling together these allegations can be readily exposed as lacking in any seriousness whatever.

For example, as part of its fundraising program, the Committee launched an “online store” where contributors could “purchase” merchandise with the Committee’s name or logo. Consistent with the Act and the Commission’s regulations, each “purchase” was reported as a contribution to the campaign. Because the prices for various items available in the online store were not whole dollar amounts or multiples of five, the Committee received a large number of contributions in “non-traditional” or “non-dollar” amounts.

When the Committee promoted certain items by email or offered free items to contributors who contributed a certain amount, the Committee often reported a spike in the number of “non-dollar” or “non-traditional” donations in the same amounts. The Committee also reported spikes in the number of contributions received on the days after certain notable events during the campaign (e.g., a Presidential or Vice Presidential debate, a major policy speech, or a significant endorsement) or in response to certain solicitations or fundraising deadlines.

Another pattern the Complainant called into question was the frequency with which single donors made more than one contribution in the same day. This is also easily explained. It was not unusual for a donor to make a traditional contribution (using a whole dollar amount) and then make a purchase at the online store on the same day. This would result in two contributions

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made on the same day – one for a whole dollar amount and one for a non-dollar or non-traditional amount. In addition, certain donors to the Obama Victory Fund (the joint fundraising committee established between the Committee and the Democratic National Committee) saw a portion of their contributions transferred to Obama for America upon contributing.

Given the volume of so-called “irregularities” cited in the Complaint, Respondents were not able, in the time allowed to respond to the Complaint, to track down every contribution noted therein. However, it compared a large number of them with the 2008 election calendar and discovered, as it suspected, that many of the dates the Complaint associates with a relatively high number of “non-traditional” or “non-dollar” contributions were dates on which the Committee promoted certain merchandise and/or sent out a high number of emails linking to the on-line store. These dates include, but are not limited to, December 11th and 12th, 2007; February 12, 2008; March 18, 2008; September 19, 2008; September 26, 2008; and September 30, 2008.

### 3. Contributions from Foreign Nationals

The Complaint further alleges that the Committee did not implement sufficient procedures to ensure that it did not accept contributions from foreign nationals. On the contrary, the Committee took significant steps to ensure that it did not knowingly solicit, accept, or receive any contributions from foreign nationals. See 11 C.F.R. § 110.20(g). Donors who contributed online were required to check a box confirming that they were either a United States citizen or a permanent resident alien. In addition (and contrary to what is alleged in the Complaint), donors who entered a foreign address were further required to enter a valid U.S. passport number before making a contribution.

To ensure that the Committee had not inadvertently accepted contributions from foreign nationals, the Committee developed an additional screening process to confirm the validity of each contribution. In accordance with this process, the Committee surveyed each contribution received by the Committee since its inception in January 2007 and identified contributions with foreign city or country names, postal codes other than valid U.S. zip codes, non-U.S. email addresses, and/or passport numbers that did not conform to standard U.S. passport numbers. After manually eliminating those contributions known to have been made by a U.S. citizen or lawful permanent resident but nonetheless identified by the automated search, the Committee has attempted to contact each of the questionable donors individually – by telephone and email – to confirm U.S. citizenship or lawful permanent residency. The Committee then refunded any contribution identified to have been made by a foreign national.

With respect to Mouir Edwan, Hussein Edwan, and Osama Edwan, the Committee has refunded the contributions or contributions at issue in a manner consistent with the Commission's regulations.

**Federal Election Commission**

**November 4, 2009**

**Page 6**

Given the unprecedented scope of the Committee's fundraising, the Complainant speculates that the Committee must have acted in violation of federal law, and call for further investigation of the Committee's finances and reporting. Yet unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

The Committee's comprehensive vetting and compliance procedures speak for themselves. Not only has the Committee complied with federal law, but it has far surpassed what is required by the Act and the regulations. In every case, the Committee has used best efforts to ensure its full compliance with the Commission's requirements. The Committee has fully addressed the allegations and irregularities cited in the Complaint, and the Complainant presents no evidence to further support his allegations against the Committee.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint and take no further action.

Very truly yours,



**Robert F. Bauer**  
**Rebecca H. Gordon**  
**Counsel to Respondents**

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